IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 477 OF 2006.
WITH
CIVIL APPLICATION NO. 627 OF 2006
WITH
CIVIL APPLCIATION NO.2383 OF 2006.

Sadashiv Hari Jagdale .. Petitioner
V/s
The State of Maharashtra and Ors.. Respondents.

None for the petitioner.

Shri C.R. Sonawane, AGP for the respondent Nos. 1 to 6

CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.

DATE : 15TH NOVEMBER, 2006.

P.C.

. None present for the petitioner and same was the case on yesterday when the petition was called out for hearing on admission.

2. We have perused the affidavit-in-reply filed by the Special Land Acquisition Officer, No. 13, Pune and it is clear from the same that this petition is in the second round, in as much as the acquisition sought to be challenged in this petition, was challenged in the Writ

Petition No. 3396 of 1988 in which the interim order was passed on 28/7/1988. The said petition came to be dismissed for default on 12/10/1995.

3. It has been further pointed out that the possession of the acquired land from the holdings of the petitioner was taken on 28/4/1987 and subsequently it came to be allotted to the Project Affected Person and his name has been mutated vide entry No. 4980 dated 7/5/1988 i.e. prior to the interim order passed by this Court in Writ Petition No. 3396/1988. The person to whom the land has been allotted is Bala Hari Mande and the total land acquired is 01 H 21 R. The Project Affected Person i.e. Bala Mande has been in possession of the allotted land for the last 18 years on the basis of the possession panchanama dated 28/4/1987. The affidavit clearly states that the petitioner is not in possession of even the remaining land at present. On the point of total holdings of the agricultural land of the family, it has been stated that the petitioners are inter se brothers and members of the joint family holding jointly total agricultural land of 5 hectors, 39 R, as per Khate No.271 and that the said Khate shows the distribution in respect of 4 brothers. In fact, there

is no partition and the land is being cultivated as joint family holdings. The Deputy Collector Resettlement (Lands), Pune vide his letter dated 14/3/1986 in his remarks had stated that even if Annewari was mentioned in the objectors holding that the partition was not affected and Vahivat was not independent, no evidence was produced regarding valid partition and therefore, individual partition in the Khate Register could not be relied upon as being only artificial distribution of the land so as to save the land from any further acquisition.

4. The petitioners' reliance to the declaration, dated 29/11/1990 and published in the State Government Official Gazette on 3/1/1991 has also been dealt with. However, the same is not applicable to the petitioner or his family members, so as to challenge the acquisition proceeding which were finalised in the year 1987. The acquisition proceeded on the basis that it was joint family holding, cannot be termed to be illegal considering the term "holding" as as been defined under Section 2(10) of the Maharashtra Resettlement of Project Displaced Persons Act, 1976.

5. Under these circumstances, we do not find any merit in the challenge raised in the second round to the acquisition proceedings finalised way back in the year 1987.

6. In case, the petitioner has definite knowledge that the balance land after allotment to Mr. Bala Mande is still unallotted, he may approach the competent authority for considering his request either for return of the land if permissible and such a request will have to be considered strictly on its own merits

7. Save and except the above clarification, the petition is hereby rejected summarily.

8. Civil Application No. 627 of 2006 is hereby allowed.

9. As the petition is rejected, Civil Application No.2383 of 2006 does not survive.

(J.H. BHATIA, J.) **(B.H. MARLAPALLE, J.)**